

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JOSEPH K. PONTHER,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-11-954-D
)	
CAROLYN W. COLVIN, ¹)	
Acting Commissioner of Social)	
Security Administration,)	
)	
Defendant.)	

ORDER AWARDING ATTORNEY FEES

Before the Court is Plaintiff's Application for Award of Attorney's Fees Under the Equal Access to Justice Act [Doc. No. 22]. Plaintiff seeks an award of fees in the amount of \$7,972.20 pursuant to 28 U.S.C. § 2412, for 40.7 hours of work on the case by attorneys and 4.9 hours of work by a paralegal. Plaintiff is the prevailing party in this action under 42 U.S.C. § 405(g) by virtue of the Judgment and Order of Remand entered August 16, 2012.

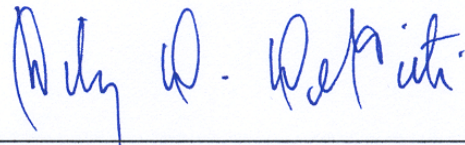
Defendant has responded to the Application by conceding that Plaintiff is entitled to a fee award, but opposing the amount sought as unreasonable. Based on an analysis of the time records submitted by Plaintiff's counsel, Defendant contends certain entries reflect duplicative or unproductive time, and three hours of attorney time should be deducted, thereby reducing the amount of the award by \$552.00.

¹ Pursuant to Fed. R. Civ. P. 25(d), Carolyn W. Colvin, Acting Commissioner of the Social Security Commission, is automatically substituted for the former commissioner, Michael J. Astrue.

Upon consideration of the law, the case record, and the arguments of the parties, the Court finds: (1) the Commissioner's position in the case was not substantially justified; (2) Plaintiff is entitled to an award of attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d); and (3) the amount requested is reasonable, notwithstanding Defendant's objection. Upon review of the billing records of Plaintiff's counsel, and the explanation provided in Plaintiff's reply brief, the Court finds that the billing records reflect time actually and reasonably spent by counsel working on the case. Further, based on previous fee awards in comparable cases, the Court is persuaded that the total amount sought is reasonable and should not be reduced.

IT IS THEREFORE ORDERED that Plaintiff's Application is GRANTED. The Court orders an award of attorney fees to Plaintiff pursuant to the Equal Access to Justice Act in the amount of \$7,972.20. Should an additional fee award under 42 U.S.C. § 406(b) subsequently be authorized, Plaintiff's attorneys shall refund the smaller amount to Plaintiff as required by *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED this 16th day of April, 2013.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE